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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/442,095	11/17/1999	CHONG-SAM CHUNG	1349.1016/GP	5416

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EXAMINER

PSITOS, ARISTOTELIS M

ART UNIT

PAPER NUMBER

2653

DATE MAILED: 03/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/442,095

Applicant(s)

CHUNG ET AL. 

Examiner

Aristotelis M Psitos

Art Unit

2653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): claim 5, now objected to.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

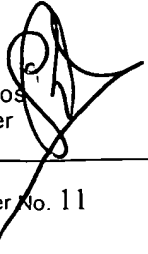
The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 12.Claim(s) objected to: 5 and 17.Claim(s) rejected: 1-4, 6-11 and 13-16.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☒ Other: See Continuation Sheet

Aristotelis M Psitos  
Primary Examiner  
Art Unit: 2653



Continuation of 5. does NOT place the application in condition for allowance because: applicant's arguments center on the lack of motivational reasoning in establishing the prima facie case of obviousness as further elaborated upon by In re Lee, 61 USPQ 2d 1430. The examiner apologizes for his inability to articulate the reasoning, and submits the following

a) with respect to the dual light sources, it is noted in Maeda et al that alternative light sources could be provided for - again note col. 4 lines 10-17. Hence the examiner concluded that the document taught equivalent light sources, and that selection of one from another be an obvious modification. Substitution of alternative embodiments, especially for a duplication of an element (from one light source and converter) to two independent light sources each at their own wavelengths would be an increase in system reliability. For example, if there is only one light source and converter, failure of either would negate the entire system, whereas when two independent light sources present, failure of one does not lead to a total system failure. Hence the examiner maintains the rejections, as stated in paragraph 3 of the previous Office action.

b) With respect to the "optimized with respect to the second laser" again, as acknowledged by the HOE used in Maeda et al, (variation of beam spot size) in order to focus upon the particular recording layer, the examiner concluded that because Maeda et al does in fact use TWO recording layers (strata), separate beams being focused upon each layer, the HOE does in fact meet the above claimed language.

c) With respect to the converting element and function thereof, the examiner interpreted such as being present in the prior art as further noted in the specification on page 8 lines 4-8, what is generally known to those in this art.

The examiner therefore concludes that the rejection as presented in paragraph 3 of the previous OA does meet the required motivational reasoning required by statute and as further elaborated upon in In re Lee supra.

d) With respect to claims 3, 4 and 15, the examiner concluded that the second collimating lens is duplicative of the first collimating lens found in the acknowledged prior art. The examiner further concludes those familiar with reliability requirements (systems analysis) that independent signal paths increase the overall system reliability (MTBF, mean time between failure) as opposed to only a single signal path. That is, a signal path requiring a shared element would fail upon failure of this shared element, as opposed to two independent paths (light sources and their own collimating element, i.e., failure of one collimating element does not mean total system failure. Since designing systems for increased reliability is part and parcel of the engineering environment, the examiner concluded that the duplication of the collimating element is obvious for the increase in reliability.

e) With respect to the arguments against claims 8-11, as noted in the relied upon reference to Kajiyama et al, HOE structures of the sort claimed are known, again, see figures 7-9 and that it would be obvious to one of ordinary skill in the art to use existing HOE structures if for no other reason than to use elements already available in the environment and hence save time in designing new elements yielding the same results - savings of time, cost, etc.

Continuation of 10. Other: Title objection is maintained, again since the title of the invention is to include the point of novelty, the HOE element is considered to be such. The DRAWING REQUIREMENT is also maintained as stated in the previous OA. FAILURE to address the drawing requirement could result in abandonment of the application..